Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

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CASE AND COMMENT

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Refusal of Clergyman to Perform Marriage Ceremony.

One of the senseless queries which newspapers are fond of raising and discussing in a serious manner is the question which the New York Sun and a considerable number of other prominent newspapers have been propounding with respect to the right of a clergyman to refuse to marry people who have a legal right to be married, although by church law they may, by reason of former marriage and divorce, or other reason, be denied the right to the religious ceremony of marriage. Since a clergyman is by the laws of the state of New York, as most other states, one of the persons who are allowed to perform a marriage ceremony, it has occurred to some of these newspaper people that he is thereby put under an obligation to perform the ceremony for any persons who ask it, unless one of them at least is prohibited by law from marrying. The idea that the legislature of the state is empowered to regulate the religious ceremonies and sacraments of the churches is one that would hardly evolve itself through anything but the astute brain of a person who was looking for something to fill space. Most newspaper men, whether on the Sun or journals that shed lesser light, are probably enlightened enough to know that marriage is in some of the churches a religious sacrament. It might, therefore, occur to them without serious effort that for the legislature to regulate the sacraments of the church, and compel clergymen to administer those sacraments under the law of the state, in contravention of the law of the church, would not be exactly consistent with the American constitutions, such as that of New York, art. 1, § 3, which says: "The free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed in this state to all mankind." We need not suppose, until we see some indication of such purpose, that there are any legislatures ready to attempt such a rank interference with ecclesiastical affairs as would be made by compelling the clergyman of a church to perform a sacrament in direct violation of the laws of the church. If that happens, we may feel fairly confident that our constitutional guaranties of religious freedom will be sufficient to protect the churches against any such interference. Meanwhile the topic may continue to serve as a space filler for newspaper editors, since its discussion will not be likely to offend any large class of subscribers or any of the valuable advertisers, and therefore does not fall within the range of subjects which the counting room prohibits the editors to mention.

"A Monkey on the Pole."

Under this dignified and elegant title the editor of the Baltimore Underwriter makes a tilt at the editor of the Insurance Register. A contribution to the discussion of a

legal question under such a heading is almost certain to be valuable in its reasoning. In this case the proposition in dispute, which the Insurance Register had in fact adopted from CASE AND COMMENT, is as follows: "Whatever the court may decide in future cases, it is certain that up to the present time it has, in the lottery and in all other cases, consistently held that the scope of the term 'commerce' as used in the Constitution is to be determined by the court, and not by Congress." In the late lottery case referred to the main part of the opinion of the court consists of a discussion of the meaning or import of the word "commerce" as used in the Constitution, all of which would have been superfluous and out of place if that was not a question for the court. In no case ever decided by the court has it been decided, assumed, or implied that the extent of the term "commerce" had been, or could be, fixed by Congress so as to preclude the court from determining that question. To affirm the contrary shows either a lack of acquaintance with the decisions, or a disregard of the facts. The editor of the Underwriter credits himself with "a study of over fifty years of constitutional law," but he does not state whether or not the study itself has lasted more than a few minutes, and it may be that those "fifty years of constitutional law" which he has studied were years which did not cover much of the subject in question.

In an attempt to prove that the proposition above quoted is a misrepresentation, the editor of the Underwriter declares that the Supreme Court has uniformly followed Chief Justice Marshall in Ogden *v.* Hoffman in holding that "the wisdom and discretion of Congress, their identity with the people, and the influence which their constituents have at the elections are, in this as in many other cases, as, for example, that of declaring war, the sole restraint on which they have relied to secure them from this abuse." Inasmuch as there never has been any such case in the Supreme Court as Ogden *v.* Hoffman, the matter might be left there, yet it is fair to presume that his intention was to cite the case of Gibbons *v.* Ogden, 9 Wheat. 1, 6 L. ed. 23, in which the opinion of Chief Justice Marshall does contain the statement quoted. But, to cite this statement as to the power of Congress to regulate commerce in proof of the statement that Congress has power to determine what is commerce is an amusing sample of reasoning. The same is true of the application made by the editor of the Underwriter of a quotation from McCulloch *v.* Maryland respecting the extent to which Congress can go in enacting laws "necessary and proper" for carrying into execution the powers granted to it by the Constitution. This quotation is that "the degree of necessity is a question of legislative discretion, not of judicial cognizance." This, he says, is "an absolute contradiction" of the proposition that the scope of the term "commerce" is to be determined by the court, and not by Congress. If the editor of the Underwriter is incapable of seeing any difference between the constitutional discretion of Congress to regulate commerce and the discretion to extend its power over what is not commerce by merely declaring it so, he may well be left to the enjoyment of his own reasoning and of the suggestive heading he chose for his editorial.

Danger of Foreign Intervention.

Doubtless the country is not much aroused yet over the danger of unpleasant interference in its domestic affairs by foreign governments, but it seems to be increasingly common for nations to protest in one form or another against barbarities tolerated by another nation within its borders, and it is impossible that every civilized nation should not be horrified at some of the barbarities that have become common in the United States, but which are so common as to be taken here almost as a matter of course.

Race riots, both North and South, furnish sensational headlines for our newspapers, sometimes draw forth vigorous condemnation from the pulpit and the press, and in some instances, it may be, lead to the arrest and punishment of some persons implicated therein. But in the great majority of cases the mobs gather, wreak their vengeance, and scatter without much interference from the government. In recent years massacres of Chinese and of Italians, infamous assaults upon Jews and nonunion laborers, and fiendish atrocities against negroes have made a record for barbarity and fiendishness that must appall enlightened and civilized people in every part of the world. It has been frequently said, and statistics cited to show, that in no so-called civilized country of the world is the protection of human life so insecure and the record for murder so bad as

in this country. Looking at the facts as they are, and considering them in their enormity, is it not necessary to expect that public sentiment in Russia and in every other leading nation of the world may force the great foreign powers to protest against the barbarities that are permitted in the United States? It may be very humiliating to the pride of the people of this country and a great shock to their complacency to have the other governments of the world, in the interests of humanity, demand of it a better protection of human life here and of the rights and safety of the Chinamen, the Jews, the Italians, the negroes and any other of the more helpless classes of the population. Would it not be well for the United States government, on the stop-thief theory, to hasten with its protest against the Kishineff outrage before the other nations make their protest against the continued tolerance of horrible atrocities in this country?

The Press in a Frenzy.

Very amusing, from one point of view, is the present newspaper tempest over the new Pennsylvania libel law. In truth, that is a comparatively harmless measure, at the worst, though it does not seem to be skilfully drawn. Its main provisions, in addition to the requirement of the publication of the names of the owners or proprietors and the managing editor in every issue, may be summed up in three points: First, the right to compensatory damages for injuries to business and reputation from negligent publications; second, the right to recover damages for physical and mental suffering in such cases; and third, the right to punitive damages, in the discretion of the jury, if "the matter complained of is libelous, and . . . such libelous matter has been given special prominence by the use of pictures, cartoons, headlines, display type, or any other matter calculated to specially attract attention."

Wild misrepresentations and violent denunciations have bristled from the pages of the newspapers throughout the country. One misrepresentation is that under this law the truth is no longer a defense. Those who have stated this, if they did it honestly, must have read the law through a heated imagination, as it does not seem possible to find a line or a word in the statute to justify such a statement.

How little the new statute really amounts to, except as a restatement of what the law was already, may be seen from analyzing its provisions in the light of the decisions on the subject. While the statement of the statute that the newspapers are liable for negligence in the ascertainment of facts and in making publications affecting the character, reputation, or business of citizens is a somewhat novel way of putting the matter, it does not seem to create any new or additional liability. Injurious publications of that kind have long been held actionable without any proof that they were made with the express purpose of doing injury, if they were made falsely and without justification. The fact that the person publishing them believed them to be true has not been deemed sufficient for his defense. That a newspaper proprietor may be responsible for libel published without his knowledge or consent is clearly established by the decisions found in a note in 26 L. R. A. 779, and some of the cases expressly say that he is liable for the "mistakes" of his employees which result in a libel on a third person. That a newspaper proprietor may be liable for publishing a libel negligently is substantially decided in Morning Journal Asso. *v.* Rutherford, 16 L. R. A. 803, 2 C. C. A. 354, 1 U. S. App. 296, 51 Fed. 513, and Press Pub. Co. *v.* McDonald, 26 L. R. A. 531, 11 C. C. A. 155, 26 U. S. App. 167, 63 Fed. 239. In both these cases it was held that a newspaper publication of an article without inquiring into its truth was not only sufficient to create a liability for libel, but, if done wantonly "or under circumstances of gross negligence," it would even justify a verdict for punitive damages. Such decisions as these cover substantially the whole ground of the new Pennsylvania statute, and even go beyond it. The former liability for gross negligence seems to be now limited by the statute to cases in which there is a special display of the libel. The provision therein for recovery of damages for physical and mental suffering puts into plain and simple form what has practically been the rule covering this subject in the past,—at least in cases of injuries to reputation. For such injuries, when the publication is libelous *per se* and special damages need not be shown, the recovery is, in substance, whatever it may be called, a compensation for mental anguish. When an honorable citizen is charged with dishonorable conduct, or an innocent and refined woman charged with

scandalous immorality, though the victim suffers no pecuniary loss, and may even suffer no loss of esteem from friends and acquaintances, a verdict for heavy damages has always been allowable. The one real and substantial injury to be compensated in such cases has been the humiliation and suffering of the victim of the libel.

The provision as to the use of cartoons is declared by a leading editorial in the Philadelphia Press and generally quoted by other journals to be the "inspiration" of the statute. If this were true, it would show a surprising lack of intelligence on the part of the Pennsylvania lawmakers, for it is difficult to see how the provision adds anything at all to the pre-existing law. That pictures may be libelous is elementary law, declared by a long line of cases, such as Randall v. Evening News Asso. 79 Mich. 266, 7 L. R. A. 309, 44 N. W. 783. The present law refers to cartoons only as one of numerous means, such as headlines, display type, or any other matter calculated "to specially attract attention" to libelous matter. If a cartoon was libelous before the statute, it is still libelous. If it would not have been libelous until the statute was enacted, it will not be libelous now. All that the statute says about the effect of the use of the cartoon is to authorize punitive damages in case libelous matter is given special prominence by the use of cartoons or by anything else; but, as shown above, any wanton publication of a libel, or even its publication "under circumstances of gross negligence," would justify punitive damages without the aid of this statute. Special display, by cartoons or otherwise, goes beyond gross negligence, and would be sufficient, as well before the statute as since, to authorize punitive damages. In short, about the only practical change in the law made by this statute is to require the newspapers to publish the names of the proprietors and managing editor. This, whether of very much value or not, certainly tends toward improvement in the tone of journalism.

The newspaper comments on this law have ranged from rank misrepresentation and frenzied wrath to cheap fustian and melodramatic heroics. The press has befogged the public understanding with respect to what the statute is. As stated by one leading newspaper, "a nonpartisan newspaper association has been formed to fight the press stranglers, and to kill politically every public man who can in any wise be held politically responsible for the existence of the ridiculous law." It adds: "Self preservation is the first law of nature," and that this "press-gag law . . . practically abolishes the business of newspaper publication within the jurisdiction of the state of Pennsylvania." Unless the editor who wrote that has been himself deceived, it shows the desperate character of newspaper proprietors when their own interests are involved, and that they are determined to stand together, without regard to political affiliations, to defeat any law which holds them responsible for libel: but, as a matter of fact, they have found a mare's nest. They are no worse under the present law than under the former, except that they are required to let the public know who owns and who edits the paper, and this they ought not to be ashamed to state. When the real nature and effect of this statute is considered, how ridiculously and infinitely absurd are the pompous utterances of the Philadelphia Press with respect to this as part of "the great struggle which has been going on for three centuries between the advance and the repression of free speech and free printing," and the bombast with which it declares: "The newspapers will meet the occasion as it ought to be met. The Press speaks for itself and will do its duty."

Index to New Notes
IN
LAWYERS' REPORTS, ANNOTATED.

Book 59, Parts 3 and 4.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

Contracts.

Garnishment of damages for breach of 359

Damages.

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Evidence.

Admissibility in evidence against accused of documents or other things taken from him:—(I.) Introductory; (II.) constitutional restrictions: (*a*) general statement—application; (*b*) unreasonable searches and seizures; (*c*) compelling evidence against self; (III.) effect of illegal or improper seizure; (IV.) rule as to articles unlawfully possessed, or in which the public has an interest; (V.) to what proceedings

Among the New Decisions.

Aliens.

Members of the Japanese race are held, in *Re* Yamashita (Wash.) 59 L. R. A. 671, not to be entitled to become citizens of the United States.

Attempt.

Mere preparatory acts for the commission of a crime, and not proximately leading to its consummation, are held, in Groves *v.* State (Ga.) 59 L. R. A. 598, not to constitute an attempt to commit the crime.

Bills and Notes.

See PRINCIPAL AND AGENT.

Blasting.

One who uses high explosives in excavating so near the property of another that the natural and probable result of an explosion will be injury to such property is held, in Fitzsimons & C. Co. *v.* Braun (Ill.) 59 L. R. A. 421, to be liable for injuries caused even by the vibration of earth or air, however high

a degree of care he may have exercised in their use.

Carriers.

A railroad company is held, in Houston & T. C. R. Co. *v.* Phillio (Tex.) 59 L. R. A. 392, to be under no obligation to protect persons who resort to its stations to aid the departure of friends who are to become passengers on its cars from assaults by persons lounging about the stations, although such duty may exist as to the intending passengers.

A railroad company is held, in Mabry *v.* City Electric R. Co. (Ga.) 59 L. R. A. 590, to be liable in damages for injury to the feelings and sensibilities of a passenger, caused by his wrongful expulsion from one of its cars, though such passenger may not have received any physical injury thereby.

Conflict of Laws.

A married woman sued in the state of her domicil is held, in First Nat. Bank *v.* Shaw (Tenn.) 59 L. R. A. 498, to have the right to avail herself of the protection of its statute allowing her to plead coverture as a defense to her contracts, when sued there on a note delivered and payable in another state, where such defense would not be recognized.

Constitutional Law.

Under a constitutional provision that private property shall not be taken or damaged for public use without just compensation having been first made, it is held, in Steinhart *v.* Superior Court of Mendocino County (Cal.) 59 L. R. A. 404, that possession of land sought to be condemned pending the proceedings cannot be given by the legislature to the applicant, upon payment into court of sufficient money to compensate the landowner in case the land is finally taken.

A statute requiring the compulsory education of children is held, in State *v.* Bailey (Ind.) 59 L. R. A. 435, not to infringe the rights of parents.

Prohibiting the placing on an official ballot of the name of an unsuccessful contestant for a party nomination at the primary election is held, in State *ex rel.* McCarthy *v.* Moore (Minn.) 59 L. R. A. 447, to be a reasonable regulation, and not to violate a constitutional provision that any person entitled to vote at any election shall be eligible to any elective office.

The disclosure by physicians of knowledge obtained as to the condition, with reference to venereal disease, of a prisoner whom they examined against his will upon his trial for rape, is held, in State *v.* Height (Iowa) 59 L. R. A. 437, to be prohibited by a constitutional provision that no person shall be deprived of life, liberty, or property without due process of law, and securing persons against unreasonable searches.

Courts.

The extension by a state of equity jurisdiction to suits to set aside probated wills is held, in Williams *v.* Crabb (C. C. App. 7th C.) 59 L. R. A. 425, to permit the maintenance of such suits in Federal courts sitting in such state, which acquire jurisdiction through diverse citizenship of the parties.

Preventing the use, during court hours, of a pavement newly laid in a street adjoining the courthouse in such a way that the noise of the traffic thereon interrupts the business of the court, is held, in *Ex parte* Birmingham (Ala.) 59 L. R. A. 572, to be within the power of a court both at common law and under a statute giving it power to preserve order so far as is necessary to prevent interruption and disturbance of its proceedings.

Criminal Law.

A conviction of a battery is held, in People *v.* McDaniels (Cal.) 59 L. R. A. 578, to bar a subsequent prosecution for the same acts as an assault with a deadly weapon, with intent to murder.

Evidence that a father refused to permit medicine to be administered to one of his minor children while sick is held, in Justice *v.* State (Ga.) 59 L. R. A. 601, not to support a conviction of the father for depriving the child of necessary sustenance within the meaning of a statute which declares such deprivation to be an offense against the laws of the state.

Eminent Domain.

See also CONSTITUTIONAL LAW.

In condemnation proceedings for a railroad right of way it is held, in Beveridge *v.* Lewis

(Cal.) 59 L. R. A. 581, that general benefit to land not taken cannot be set off against damages to it under a constitutional provision requiring compensation to be made in money and in advance.

Equity.

A court of equity is held, in Freer *v.* Davis (W. Va.) 59 L. R. A. 556, to have no jurisdiction to settle the title and boundary of lands between adverse claimants, when the plaintiff has no equity against the party claiming adversely to him.

Evidence.

The instruments, devices, or tokens used in the commission of a crime are held, in State *v.* Edwards (W. Va.) 59 L. R. A. 465, to be competent and legitimate evidence in the trial of the accused, and the taking of them from his person by an officer who has arrested him upon a charge of his having committed the crime is held not to be an illegal seizure.

Ferries.

The owner of a ferry is held, in Sistersville Ferry Co. *v.* Russell (W. Va.) 59 L. R. A. 513, not to be entitled to recover compensation for injury to his ferry flowing from loss of patronage incident to the establishment of a second ferry, either from the owner of the second ferry or the county.

Garnishment.

A claim against a railroad company for unliquidated damages for breach of a shipping contract is held, in Waples-Platter Grocer Co. *v.* Texas & P. R. Co. (Tex.) 59 L. R. A. 353, not to be subject to garnishment.

An owner of land abutting on a public street is held, in First Nat. Bank *v.* Tyson (Ala.) 59 L. R. A. 399, to have an easement of view from every part of the street, of which he cannot be deprived by encroachments placed on it by an adjacent proprietor.

Husband and Wife.

See WITNESSES.

Injunction.

The unauthorized publication of one's likeness by another person for advertising purposes is held, in Roberson *v.* Rochester Folding Box Co. (N. Y.) 59 L. R. A. 478, not to give a right to an injunction or damages on the theory that it is an invasion of a "right of privacy."

Insurance.

The innocence of an insured who was executed after conviction of a capital crime is held, in Burt *v.* Union Central Life Ins. Co. (C. C. App. 5th C.) 59 L. R. A. 393, not to change the rule that insurance cannot be recovered upon the life of a person who was executed for crime, even if the policy makes no provision for forfeiture on that account.

A contract to indemnify an employer against loss by reason of liability for accidental injuries to employees is held, in Frye *v.* Bath Gas & Electric Co. (Me.) 59 L. R. A. 444, not to inure to the benefit of an injured employee, so that he can enforce payment of it in case the employer becomes insolvent and makes an assignment for creditors before he receives his judgment.

A provision of an insurance policy rendering it void if, without consent of the insurer, mechanics are employed in building, altering, or repairing the premises for more than fifteen days at any one time, is held, in German Ins. Co. *v.* Hearne (C. C. App. 3d C.) 59 L. R. A. 492, to be operative regardless of the reasonableness of the repairs.

In case of the death, in the same disaster, of a member of a mutual benefit society and the beneficiary named in the certificate, which provides that, in the event of the death of the beneficiary before the decease of the member, the benefit shall be paid to his heirs, it is held, in Middeke *v.* Balder (Ill.) 59 L. R. A. 653, that the representatives of the beneficiary must show her survivorship or the fund will go to the heirs.

Judgment.

A foreign judgment rejecting a claim after a fair trial upon the merits is held, in MacDonald *v.* Grand Trunk Ry. Co. (N. H.) 59 L. R. A. 448, to be a bar to a subsequent attempt by the same plaintiff to recover the same claim from the same defendant in the

local courts, although such judgment involves a mistake as to the force and effect of the local laws.

Malicious Prosecution.

A suit for partnership accounting which results in a judgment in plaintiff's favor for a small balance is held, in Swepson *v.* Davis (Tenn.) 59 L. R. A. 501, not to sustain a simple action for malicious prosecution, although complainant alleged mismanagement of the business and misappropriation of funds, which allegations were not sustained.

Master and Servant.

The negligence of a fellow servant is held, in Loveless *v.* Standard Gold Mining Co. (Ga.) 59 L. R. A. 596, not to relieve the master from liability to a coservant for an injury which would not have happened had the master not been negligent himself.

Mines.

The mere drilling of a well and the discovery of oil are held, in Parish Fork Oil Co. *v.* Bridgewater Gas Co. (W. Va.) 59 L. R. A. 566, not to give a vested interest in the oil to the lessees in an oil and gas lease, so as to give them the right to cease operations, refuse to develop the property, and simply hold it for speculative purposes, but merely to vest in them the right to produce and take the oil in accordance with the terms of the contract.

Municipal Corporations.

See also STREET RAILWAYS.

A municipality is held, in Clayton *v.* Hallett (Colo.) 59 L. R. A. 407, to have the power to take property in trust for the education of poor white male orphans, under statutory authority to take gifts by devise, and providing for the assistance of charitable organizations and for the good order, health, good government, and general welfare of the city.

Under a general welfare clause a municipal corporation is held, in Watson *v.* Thomson (Ga.) 59 L. R. A. 602, to have no right to prohibit one from carrying on a lawful avocation on Christmas Day, when there is nothing in the character of the business which is calculated to interfere with the peace, good order, and safety of the community.

A constitutional provision that no city shall become indebted beyond a certain limit "in any manner or for any purpose" is held, in Ottumwa *v.* City Water Supply Co. (C. C. App. 8th C.) 59 L. R. A. 604, to forbid the making of a present levy of an annual tax, to extend over a long period of years, for the payment of interest-bearing bonds, with the proceeds of which a municipal water supply is to be immediately procured.

The issuance of bonds by a municipality, to procure funds for a water supply, which are payable out of a sinking fund to be provided by a special tax upon the property within the municipality, and for which there can be no general liability on the part of the city, is held, in Swanson *v.* Ottumwa (Iowa) 59 L. R. A. 620, not to create an indebtedness within the meaning of a constitutional limitation of municipal indebtedness.

Negligence.

One who negligently inflicts injury on another is held, in Maguire *v.* Sheehan (C. C. App. 1st C.) 59 L. R. A. 496, not to be able to escape any part of the loss caused thereby for the reason that, because of the condition of the injured person, produced by his voluntary use of alcohol, the shock of the injury brought on delirium tremens, which retarded his recovery.

Parent and Child.

See CONSTITUTIONAL LAW.

Principal and Agent.

One purchasing from an agent, upon his indorsement, commercial paper payable to the order of his principal, is held, in Jackson Paper Mfg. Co. *v.* Commercial Nat. Bank (Ill.) 59 L. R. A. 657, to have no right to imply authority to make the indorsement from the facts that he has been the agent in charge of the principal's mill, engaged in the management of his business, opening mail, giving orders to employees, and countersigning checks drawn by the principal for supplies.

Privacy.

See INJUNCTION.

Railroads.

No invitation to cross the yard of a railroad company to reach show grounds is held, in Clark *v.* Northern P. R. Co. (Wash.) 59 L. R. A. 508, to be given by the railroad company by permitting a circus to exhibit on its vacant land adjoining its switch yard, so as to charge it with the duty of exercising care to protect people from danger, and render it liable to one injured by the operation of trains while attempting to cross the yard after having been expressly told to keep out, where the show grounds can be reached without danger by the highway.

A railroad company is held, in Ashworth *v.* Southern R. Co. (Ga.) 59 L. R. A. 592, to be liable for injury to a child of immature years who gets upon the running board of an engine as it enters a playground, according to a general custom of children playing there, well known to the railroad employees, and who is injured while attempting to alight therefrom at a point where children have been, for a long time previous, in the habit of alighting, even though the employees in charge of the train had no actual knowledge of the child's presence upon the engine.

Schools.

See CONSTITUTIONAL LAW.

Street Railways.

An ordinance requiring all street railways to pave, repave, and keep in repair the space between their tracks and between the rails of their tracks and for the space of one foot outside of each outer track, is held, in Fielders *v.* North Jersey Street R. Co. (N. J. Err. & App.) 59 L. R. A. 455, to be an invalid assumption of the power of taxation, and not to be sustainable as an exercise of the police power.

Electric railway companies are held, in *Re* Stillwater & M. Street R. Co. (N. Y.) 59 L. R. A. 489, to be entitled to track connections with intersecting steam roads, where the incorporation of both classes of roads is provided for by the same statute, the various provisions of which, including those for track connections, refer to "every railroad corporation."

To entitle a company operating a system of street railways which were originally constructed under charters granted to separate companies to the benefit of contracts between the municipality and such companies, fixing the rates of the fare to be charged by them, it is held, in Chicago Union Traction Co. *v.* Chicago (Ill.) 59 L. R. A. 631, that it must show the assignment of such contracts to itself.

Requiring street-car companies to keep the surface of the streets between their outer rails clean is held, in Chicago *v.* Chicago Union Traction Co. (Ill.) 59 L. R. A. 666, not to illegally discriminate against, or cast the public burden upon, them, where their tracks tend to accumulate dirt, and make the crown of the street flat, so as to render the cleaning of the street much more difficult than it otherwise would be.

Telegraphs.

A grandmother is held, in Western U. Teleg. Co. *v.* Crocker (Ala.) 59 L. R. A. 398, to be entitled to recover damages for mental anguish for failure promptly to deliver to her a telegram announcing the serious illness of her grandchild.

Delivery of a telegram, directed to a person in care of a railroad company at a certain place, to the ticket agent of the company there after making extensive search for the sendee, is held, in Lefler *v.* Western U. Teleg. Co. (N. C.) 59 L. R. A. 477, to relieve the telegraph company from further liability.

Loss sustained by performance of a contract closed at a price quoted in a telegram as changed in transmission is held, in Germain Fruit Co. *v.* Western U. Teleg. Co. (Cal.) 59 L. R. A. 575, not to make the telegraph company liable, where the sendee, from his knowledge of the market, knew that a mistake must have occurred, and acted in bad faith, since, the contract not being binding upon the sender, it is held that he cannot voluntarily perform it and throw the loss on the company.

Voters and Elections.

See CONSTITUTIONAL LAW.

Waters.

See FERRIES; MUNICIPAL CORPORATIONS.

Wills.

The adoption of a child after the making of a will is held, in Flannigan *v.* Howard (Ill.) 59 L. R. A. 664, to bring it within the provisions of a statute providing that on the birth of a child after the making of a will, unless an intention to disinherit it shall appear from the will, the devises and legacies shall be abated in equal proportions to raise a portion for such child equal to that which it would have been entitled to receive out of the estate of the testator had he died intestate.

Witnesses.

Offenses committed before marriage are held, in People *v.* Curiale (Cal.) 59 L. R. A. 588, not to be within an exception of "cases of criminal violence upon one by the other" in a statute forbidding husband or wife to testify against the other.

New Books.

"Rust's Criminal and Penal Code." 17th Ed. with Amendments of 1903. (Matthew Bender, Albany, N. Y.) 1 Vol. $3.50.

"Paul on Trademarks." Including Trade Names and Unfair Competition. (Keefe-Davidson Co., St. Paul, Minn.) 1 Vol. $7.50.

"Legal Masterpieces." By Van Vechten Veeder. (Keefe-Davidson Co.) 2 Vols. Sheep, $7. Buckram, $6.

"Corporate Management." By Thomas Conyngton. (Lawyer's Co-operative Pub. Co., 79 Nassau St., New York.) 1 Vol. Buckram, $2.50. Postpaid, $2.70.

"Trust Laws of the United States." The Act to Regulate Commerce (as amended) and Acts Supplementary thereto, 1887-1903. Compiled by Joel Grayson. (Lawyers' Co-operative Publishing Co., Rochester, N. Y.) Pamphlet, $.25.

"Annotated Bankrupt Law Act of 1898." With Amendments of 1903. 2d ed. By Nathan Frank. (The Bobbs-Merrill Co., Indianapolis, Ind.) 1 Vol. $3.

"Lindley on Mines." 2d Ed. (Bancroft-Whitney Co., San Francisco, Cal.) 2 Vols. $15.

"Rose's U. S. Digest." Vol. 2. (Bancroft-Whitney Co.) $7.50.

"Statutes (Session Laws) of California." 1903. (Bancroft-Whitney Co.) 1 Vol. $3.75.

"Washington State Reports." Vol. 29. (Bancroft-Whitney Co.) $4.

"Analytical Tables of the Laws of Evidence." For Use with Stephens' Digest of the Law of Evidence. By George M. Dallas and Henry Wolf Bikle. (T. & J. W. Johnson & Co., Philadelphia, Pa.) 1 Vol. Buckram, $1.50.

"Miscellaneous Writings of the Late Hon. Joseph P. Bradley." With a Review of His Judicial Record by William Draper Lewis and an Account of His Dissenting Opinions by A. Q. Keasbey. Edited and compiled by Charles Bradley. (Charles Bradley, P. O. Box 284, Newark, N. J.) 1 Vol. $3.

"A Collection of the Writings of John James Ingalls." With Introduction by Hon. George R. Peck and Character Sketch of Mr. Ingalls by Rev. Edward F. Trefz. Edited by Wm. E. Connelley. (The State Capital Co., Guthrie, Okla.) Cloth, $2.50. Buckram, $3. Half Morocco, $3.25. Full Morocco, $4.50.

"The Corporation Code of North Carolina." With Amendments of 1903. Compiled by W. S. Wilson. (A. Williams & Co., Raleigh, N. C.) 1 Vol. Paper, $1. Sheep, $1.50. Amendments separate, $.25.

"The Oldest Code of Laws in the World." The Code of Laws Promulgated by Hammurabi, King of Babylon. B. C. 2285–2242. Translated by C. H. W. Johns, Edinburgh. T. & T. Clark. (Imported by Charles Scribner's Sons, New York.) 1 Vol. 88 Pages. $.75.

This little Code, containing less than 300 sections, is a great legal monument arising out of the dim past. From the standpoint of biblical archæology its discovery and decipherment have been declared the greatest event for many a day. In the history of human laws it is of equal or greater importance. Its cost is merely nominal, but its value to the library of every scholarly lawyer is great.

"Manual of Forensic Quotations." By Leon Mead and F. Newell Gilbert. Introduction by John W. Griggs, New York. (J. F. Taylor & Co.) 1 Vol. 207 pages. $1.50.

In the language of the preface, this "is meant to be a book for all who love great truths said in a great way, and not a formal digest for lawyers," though for illustrative passages or suggestions it may be valuable.

not only to them, but to public speakers and writers of every kind. It is a worthy and desirable thing, as Mr. Griggs declares, "to preserve these flitting and evanescent outbursts of eloquence."

"Stevens' Mercantile Law." 4th Ed. (Butterworth & Co., 12 Bell Yard, Temple Bar, London, Eng.) 1 Vol. 6 *s.* 10 *d.*

"Brown's Copyhold Enfranchisement Acts." 3d Ed. (Butterworth & Co.) 1 Vol. 16 *d.*

"Digest of Kentucky Reports." Vols. 1 and 6. (John P. Morton & Co., Louisville, Ky.) 2 Vols. $12.

"Women under the Law of Massachusetts." Their Rights, Privileges, and Disabilities. 2d Ed. By Henry H. Sprague. (Little, Brown & Co., Boston, Mass.) 1 Vol. Cloth, $1.

"Law of Business Corporations." Detailed Synopses of the Laws of Business Corporations for Every State and Territory of the United States and Foreign Countries. (The Corporation Legal Manual Co., Plainfield, N. J.) 1 Vol. $5.35.

"Revised Statutes of Maine." 1903. (Loring, Short, & Harmon, Portland, Me.) 1 Vol. $3.50.

"Jacobs' New York Bar Examination Questions and Answers." (Banks Law Publishing Co., New York.) 1 Vol. $4.

"Cardozo's Jurisdiction of the New York Court of Appeals." (Banks & Co.) 1 Vol. Buckram, $2.50. Sheep, $3.

Recent Articles in Law Journals and Reviews.

"The Venezuelan Affair in the Light of International Law."—42 American Law Register N. S., 249.

"Ex Pacto Actio non Nascitur."—42 American Law Register N. S., 268.

"Venue of Suits against Joint Defendants in Federal Courts."—7 Law Notes, 25.

"Right of Congress under Its Power to Regulate Commerce to Prohibit the Interstate Shipment of Any Specific Articles."—56 Central Law Journal, 341.

"The Application of the Common Law to Lands Held by the United States in the Former Territory of the United States Northwest of the River Ohio, and Especially in Respect to Private Waters as Distinguished from Public Waters."—56 Central Law Journal, 344.

"Combinations in Restraint of Interstate Commerce under the Sherman Anti-Trust Act."—56 Central Law Journal, 349.

"The Northern Securities Cases, III."— 3 Columbia Law Review, 305.

"The Negotiable Instruments Law—A Course of Study."—20 Banking Law Journal, 217.

"The Effect Which United States Courts will Give to the Decisions of State Courts."—11 American Lawyer, 163.

"Rights and Remedies of Inventors for the Use of Their Patented Inventions by the United States Government."—65 Albany Law Journal, 99.

"Municipal Corporations: Contract for Printing. Ordinance Requiring Union Label Unconstitutional."—65 Albany Law Journal, 102.

"Regulation of Expert Testimony as to Disputed Handwriting."—65 Albany Law Journal, 107.

"Is the Christian Religion Part of the Common Law of the United States?"—65 Albany Law Journal, 113.

"Acceptance of the Risk by the Servant."—56 Central Law Journal, 323.

"What Are Lotteries?"—56 Central Law Journal, 332.

"Constitutionality and Construction of Compulsory Education Laws."—56 Central Law Journal, 361.

"Life Insurance Policies as Assets to Pass to Trustee for Bankrupt Estate."—56 Central Law Journal, 364.

"Privileges and Exemptions from Service of Process."—56 Central Law Journal, 370.

"Rescission for Breach of Warranty."—16 Harvard Law Review, 465.

"Government Ownership of Public Utilities."—16 Harvard Law Review, 476.

"Criminal Attempts."—16 Harvard Law Review, 491.

"The Exercise of the Pardoning Power in the Philippines."—12 Yale Law Journal, 405.

"Must the Rejection of an Offer be Communicated to the Offerer."—12 Yale Law Journal, 419.

"The Latest Development of the Interstate Commerce Power—The Lottery Tickets Case."—1 Michigan Law Review, 615.

"The Right of the Jury to Pass upon the Admissibility of Dying Declarations."—1 Michigan Law Review, 624.

"Collateral Attacks Based on Irregularities."—1 Michigan Law Review, 645.

"The Right of Foreign Corporations to Hold Land." 1 Michigan Law Review, 658.

"Situs of Property for Purposes of Inheritance Taxation."—56 Central Law Journal, 381.

"Habeas Corpus Proceedings for the Release of Infants."—56 Central Law Journal, 385.

"Disbarment of Attorney for Unprofessional Solicitation of Business."—56 Central Law Journal, 389.

"National Incorporation and Control of Corporations."—11 American Lawyer, 61.

"Maritime Lien for Damage."—3 Columbia Law Review, 369.

"Is Suicide Murder?"—3 Columbia Law Review, 380.

"Agency Imputed from 'Course of Business.'"—3 Columbia Law Review, 395.

"Unfair Trade—Proper Name and Name of Place."—23 National Corporation Reporter, 426.

The Humorous Side.

EXEMPTING THE BAND WAGON.—A Kansas statute duly enacted this present year to regulate the running of automobiles and motor vehicles makes the following express exemption: "Nothing in this section shall be construed as in any way preventing, obstructing, impeding, embarrassing, or in any other manner or form infringing upon the prerogative of any political chaffeur to run an automobilious band wagon at any rate he sees fit compatible with the safety of the occupants thereof; provided, however, that not less than ten or more than twenty ropes be allowed at all times to trail behind this vehicle when in motion, in order to permit those who have been so fortunate as to escape with their political lives an opportunity to be dragged to death; and provided, further, that whenever a mangled and bleeding political corpse implores for mercy the driver of the vehicle shall, in accordance with the provisions of this bill, 'throw out the life line.'" A correspondent intimates that this provision was interpolated as a joke, and got through unnoticed. It would be fortunate if the "little joker" sometimes concealed in statutes were never more serious than in this case.

ON THE VERGE OF UBIQUITY.—"This proceeding, on the part of appellees, is a jumbled up, jargoned conglomeration of pretended compliance with the statute, and an attempt to equitise a proceeding by a mixture of autocratism, in a country where laws have had forms, and in which statutes had meanings, and it leaves the owners of land on a prairie without statute or law to be governed by.

. . . . . .

"In this case not the least semblance of the law to be governed by was followed, and by the action of the Court below an attempt at subversion and confiscation, without legal right or authority, and an abuse of power, unparalleled, excepting as to the amount in controversy, was contemplated; but even though one cent be taken (in these days of multi-millionaires) from a plebeian, is no more than a million taken from the patricians, and justice may be had, though it is sometimes expensive. And yet the law should govern the rich as well as the poor. No wonder we are on the verge of ubiquity. We know not where to lay down, or what to lie down on. Give us what is ours, is all we ask—A WRIT OF CERTIORARI, and the record will prove all that has been stated entitling appellants thereto."

NOT THE SUPREME JUDGE.—A newly elected police judge whose functions included the performance of marriage ceremonies occasionally consulted a brother attorney as to the best form to be adopted for such ceremonies, and they agreed to prepare one for his use. But before they had found the time to do so an occasion suddenly arose in which the judge was called upon to exercise this function. Somewhat perturbed by his novel position, he nevertheless succeeded admirably. After impressively asking each of the parties in turn as to their willingness to take the other in marriage, and receiving satisfactory affirmatives, he declared, with great solemnity, "By virtue of the authority vested in me by the laws of the state of New York I pronounce you man and wife," adding, "Whom God hath joined together let no man put asunder." On complacently telling his success to his brother counselor the latter listened to the recital of the form used with a twinkle in his eye as he noticed the sudden transition from the words "I pronounce" to "Whom God hath joined," and said, "But you were only elected police judge, you know."